



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Color Ad Signs and Displays

File: B-241544

Date: February 12, 1991

David C. Velke, Sr. for the protester.
Wilbur J. Hall, for Gallery Productions, an interested party.
Alton E. Woods, Esq., and Justin P. Patterson, Esq., United States Department of the Interior, for the agency.
Anne B. Perry, Esq., Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that experience requirement is unduly restrictive of competition is dismissed as untimely where the requirement is clearly set forth in the solicitation and the protest was not filed before the closing date for receipt of initial proposals.
2. Allegation that protester was given inadequate time to respond to request for additional information is dismissed as untimely where not raised within 10 days after the basis of protest was known.
3. Agency determination to eliminate protester's proposal as technically unacceptable is reasonable, despite fact that only one offeror remains in competitive range, where the solicitation stressed the need for high quality workmanship, and after being advised by agency of deficiencies in its initial proposal, the protester's revised proposal does not demonstrate the required experience in related work, and the required references supplied by the protester provided unfavorable comments on the quality of the protester's work.

DECISION

Color Ad Signs and Displays protests the award of a contract to Gallery Productions under request for proposals (RFP) No. 14-01-0001-90-R-19, issued by the United States Department of the Interior for fabrication and design of museum exhibits. Color Ad alleges that the agency improperly rejected its

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low-priced offer and awarded a contract to the high-priced offeror.

We deny the protest in part and dismiss it in part.

The solicitation anticipated an indefinite delivery, indefinite quantity contract against which firm, fixed-priced delivery orders would be issued for the rehabilitation of Interior's museum, which was created in 1938 to present the history, goals, and activities of the Department. Offerors were to provide loaded hourly rates for each labor/task category, for a 1-year base period, and four 1-year option periods, and a firm, fixed-price proposal for two specific tasks outlined in the RFP, using the price elements provided under the base contract period as appropriate. These tasks consisted of: (1) fabrication of an overview of Interior's history exhibit at the museum entrance; and (2) fabrication of exhibits on the art and architecture of the Main Interior building to be located in the first floor alcoves. The solicitation provided a formula for calculation of "Award Points"; and stated that "[w]hile the Total Award Score shall be a critical factor in selection for award, the Contracting Officer shall make award to that offeror representing the best offer to the Government, all factors considered." The technical award points were based on the following technical evaluation criteria: (1) Technical approach, including past related museum exhibit fabrication experience, 0 to 35 points; (2) Key personnel, 0-15 points; (3) Samples of similar museum quality exhibit fabrication projects, 0 to 35 points; and (4) Physical plant/equipment, 0 to 15 points.

Two proposals were received, and after the initial evaluation, a round of discussions were conducted with each offeror. Clarifications were requested and received from each offeror 2 days later. As a result of an evaluation of Color Ad's clarifications and proposals, including information received from references that were familiar with previous work done by Color Ad, the contracting officer eliminated Color Ad's proposal from the competitive range. Award was made to Gallery Productions on September 27 at a price of \$161,428 for the two specifications.

In its protest filed in our Office on October 9, Color Ad asserts that the solicitation contains unnecessarily restrictive conditions concerning past experience which severely limited competition. The protester also argues that the 2 days it was given to respond to the clarification request for additional information was inadequate. In addition, Color Ad contends that rejection of its proposal was unwarranted because its price for the two tasks was almost half of the

awarded contract price, and its firm can and does perform the type of work required to the standards set forth in the solicitation.

We dismiss as untimely Color Ad's allegations against the solicitation provisions and the limited time it was given to respond to the clarification requests. Color Ad's allegation that the level of experience required by the solicitation improperly restricted competition is untimely because this requirement was apparent on the face of the solicitation but was not protested until after award. Under our Bid Protest Regulations, protests based on alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed prior to that date. 4 C.F.R. § 21.2(a)(1) (1990).

Color Ad's allegation concerning inadequate response time is untimely because it was not filed within 10 days after the basis of protest was known. 4 C.F.R. § 21.2(a)(2). Color Ad was required to protest the response time issue within 10 days after September 19, the date on which it was given the deadline, but waited almost 1 month until after it was informed of the award to a competitor.

The remaining issue is Color Ad's challenge to the rejection of its proposal as technically unacceptable. The determination of the relative desirability and technical adequacy of the proposals is primarily a function of the procuring agency which enjoys a reasonable range of discretion in proposal evaluation. Kurt Eickhof, B-240128, Oct. 16, 1990, 90-2 CPD ¶ 297. Consequently, we will question the agency's technical evaluation only where the record shows that the evaluation does not have a reasonable basis or is inconsistent with the evaluation criteria in the RFP. Id.

The determination of whether a proposal is in the competitive range is principally a matter within the contracting agency's reasonable exercise of discretion. Besserman Corp., B-237327, Feb. 14, 1990, 90-1 CPD ¶ 191. Determinations by contracting agencies that leave only one proposal within the competitive range are closely scrutinized by our Office. Comten-Comress, B-183379, June 30, 1975, 75-1 CPD ¶ 400. Here, we find the agency's technical evaluation and elimination of Color Ad's proposal from the competitive range was reasonable. Color Ad was excluded from the competitive range primarily because it did not possess the requisite experience, its references were unfavorable, and it failed to submit adequate required samples.

As part of the evaluation of technical approach, the solicitation provided that offerors demonstrate the ability to perform the required work, including evidence of past "related

experience." To establish past related experience, the solicitation states that an offeror must show that the company specializes in the field of museum exhibit fabrication and "within the past 2 years the company has fabricated at least 10 medium-sized projects valued at least \$50,000 each."

Color Ad provided documentation of only three such projects valued at \$50,000 each. In addition, Color Ad's proposal did not, for example, reflect experience in cabinetry work, which is a large part of this project; indicate adequate carpentry equipment; or include the appropriate type of graphic samples called for by the solicitation.^{1/} The technical evaluators found that, to a large extent, Color Ad's proposal merely parroted back what was contained in the solicitation and attached drawings. Further, Color Ad's references almost uniformly informed the agency that during the projects on which they worked with Color Ad, the government had to engage in continual monitoring of the contractor's work to ensure that the contractor met completion schedules. It was also noted that Color Ad lacks adequate internal management controls and quality control procedures, and one reference stated that Color Ad has been known to underbid a job to get a contract and then ask for increases in the contract price due to changes.^{2/}

Color Ad's response to the agency report is to assert that only two out of the five evaluators were "this negative" towards Color Ad's proposal, and to argue that these two evaluators lack experience and are not qualified to be reviewers and that they relied on hearsay and gossip.

We do not find it unreasonable for the technical evaluators to rely on statements made by required references supplied by the protester. Moreover, evaluator qualifications are within the contracting agency's sound discretion and do not give rise to review by our Office unless there is a showing of possible


^{1/} Specifically, Color Ad did not submit the correct color-quartz sample, and instead of a "corner" as was called for in the RFP, the protester submitted a "niche." Also, a subsurface graphic panel which Color Ad submitted had a visual error.

^{2/} The contracting officer noted that Color Ad's offer for this project was considerably below the government estimate, which she considered put into question Color Ad's comprehension of the nature and scope of the work, or whether the contractor would attempt to "get well" during performance with change orders.

abuse of that discretion, by, for example, ignoring a conflict of interest or actual bias on the part of evaluators. Warren Elec. Constr. Corp., B-236173.4; B-236173.5, July 16, 1990, 90-2 CPD ¶ 34. There has been no such showing here, moreover, the disparate point scores of the evaluators does not demonstrate that Color Ad's proposal was wrongly eliminated from the competitive range. Evaluators' point scores are useful only as guides to decision making and are generally not controlling in a selection decision because they often reflect the disparate subjective judgments of the evaluators. Bunker Ramo Corp., 56 Comp. Gen. 712 (1977), 77-1 CPD ¶ 427; aff'd, B-187645, Aug. 17, 1977, 77-2 CPD ¶ 124.

In view of Color Ad's lack of related experience, unfavorable references, submission of improper and poor quality samples, in conjunction with the fact that the agency considered the quality of the workmanship vital, due to the fragile and irreplaceable nature of historic objects in the museum exhibits, the contracting officer reasonably concluded that Color Ad's proposal was technically unacceptable. The mere fact that Color Ad offered a lower price is irrelevant where the firm's proposal was properly found technically unacceptable, since a technically unacceptable proposal cannot be considered for award regardless of the potential cost savings to the government. Intraspace Corp., 69 Comp. Gen. 310 (1990), 90-1 CPD ¶ 327.

The protest is dismissed in part and denied in part.


for James F. Hinchman
General Counsel